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C O N F I D E N T I A L SECTION 01 OF 02 NAIROBI 004683

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TAGS: [PGOV](#) [ASEC](#) [PREL](#) [KDEM](#) [ECON](#) [KE](#)

SUBJECT: KENYA'S GAMBLE ON A NEW CONSTITUTION UNLIKELY TO
PAY OFF

REF: A. NAIROBI 4551

[1](#)B. NAIROBI 4143

Classified By: Political Counselor Michael J. Fitzpatrick; Reasons 1.4
(B&D).

[1](#)1. (C) SUMMARY: Kenya's November 21 referendum on a proposed new constitution risks further polarizing the nation along tribal lines, regardless of the outcome. With the "Orange" opposition increasingly confident of victory, the stage is being set for continued political standoff if they win -- and violent protests if they lose. END SUMMARY.

[1](#)2. (C) The ongoing campaign leading to the November 21 national referendum on a proposed new constitution is only secondarily about "how" power is wielded; the real issue is "by whom." Kenya's last national elections in 2002 decided who would NOT rule Kenya, with Daniel arap Moi stepping down after 24 years of power, but it did not resolve decisively who would really hold sway post-Moi. The Kikuyu tribesmen of Mwai Kibaki's NAK/DP (&NAK8) faction came to power by creating a National Rainbow Coalition ("NARC") with Raila Odinga's LDP party, which is dominated by the Luo people. Kibaki became President, but Odinga, who had been promised the to-be-created Prime Ministry under the to-be-promulgated new constitution, was double-crossed when Kibaki's government failed to promulgate the new constitution. Kenya's national politics, and the NARC, have been stalemated ever since.

[1](#)3. (C) Both sides have become increasingly explicit that the referendum is less about the text of the proposed constitution and more a vote of confidence -- or no confidence -- in President Kibaki's continuing administration. Many view the vote as an attempt to ratify the NAK's betrayal of the LDP -- and the draft as locking in Kikuyu dominance over other tribes. The fact is not lost on anyone that President Kibaki leads the charge for the YES (or "Banana") campaign, and Roads and Public Works Minister Odinga has joined forces with ex-president Moi's KANU opposition to lead the NO (or "Orange") campaign against the new draft constitution. Already, some politicians are calling for snap elections if Kibaki fails to obtain approval of the new constitution. And the NO camp increasingly believes it will have the numbers to block the new constitution at the polls.

"All politics is tribal"

[1](#)4. (C) The national debate has increasingly turned tribal -- and violent. The killing by police of four persons after an October 30 YES rally in Kisumu, Odinga's hometown, was but the clearest manifestation (Ref A). (There is no doubt that Orange protestors sought to prevent the Banana rally. But the killings appeared to take place away from the rally site -- and after it had concluded. One autopsy appeared to vindicate Orange claims that the dead man had been dragged from his house and shot at pointblank range. That the others killed were children -- including the uniformed schoolboy son of a police official, shot in the back of the head -- added to the outrage.) Tribal politics have surged to the fore, with pro- and anti- forces both spreading vicious lies and wild gossip about each other. Information Minister Tuju (whose Kisumu rally precipitated the violence) has warned tribal radio stations not to encourage incitement -- a la Rwanda, 1994. But the line is a thin one. The manager of KISS-FM, a major Nairobi station (himself a Kalenjin, close to ex-President Moi and in the NO camp) has been threatened with being pulled off the air -- and his Ghanaian co-manager deported -- if verbal criticisms of the YES/Banana campaign, and of First Lady Lucy Kibaki, do not cease. The manager is scared for his safety, and that of his family. Meanwhile, pro-Banana Citizen Radio has been accused repeatedly of spewing venomous incitement against tribes viewed as opposed to the new constitution.

[1](#)5. (C) Many Kenyans are alarmed by the speed and intensity of the turn to tribalism. Kikuyu communities have circled the wagons -- convinced that the Luo and other tribes are attempting to use the referendum to rollback Kikuyu gains. YES Ministers have publicly accused the United States Embassy and the UK High Commission of financing the NO campaign, which only bolsters suspicions that we are intent on bringing down the Kibaki government. (Their reason for our alleged

unhappiness? Because NARC refuses to be a lapdog for UK financial interests.) A massive get-out-the-vote effort is underway in the Kikuyu heartland, in the belief that a large and solid YES vote by Kikuyus would be enough to carry the day for YES, regardless of Kenya's 40-plus other tribes. The Kikuyu have isolated themselves -- and now risk being seen as national spoilers, tribal polarizers, regardless of whether Kibaki should win or lose the referendum.

16. (C) The NO campaign is increasingly convinced it will win the referendum. One public opinion poll showed them 10 points ahead -- but with a quarter of voters still undecided. Another poll has them leading almost 2 to 1. "The only way we can lose," they say, "is if the vote is stolen from us." NO campaigners are intensifying efforts to educate vote-counters and observers. The YES camp's continuing confusion and disorganization (e.g., it cannot even decide if the draft constitution is, or is not, a government proposal) suggests the arrogance of incumbency -- and perhaps a bit of desperation. The YES camp is aggressively courting various tribes and interest groups with financial incentives -- land titles, salary hikes, and revenue streams (Ref B). While it remains unclear just how much such inducements will ultimately cost the central treasury, it is also unclear that voters are responding positively to the incentives. There are also reports that government trucks have ferried truckloads of clubs, machetes and guns to the farm of at least one YES parliamentarian in the Rift Valley, a province that remains up for grabs between YES and NO campaigners.

What Happens Next?

17. (C) There is no easy, short-term glide path for Kenya. A narrow margin of victory by either side risks being challenged by the losers as an illegitimate theft of popular will. Conventional wisdom has been to hope that whichever side wins does so handily, so the results would quickly obtain legitimacy and national acceptance. Another oft-whispered scenario has President Kibaki saving face by privately signaling for judges to rule against his holding the referendum as planned -- and throw the draft text back to Parliament for further debate and amendment. But, despite the pending court cases, this option might no longer be politically viable. With the Orange/NO camp now believing its own momentum is unstoppable, kicking the text back to Parliament would be seen by Kibaki opponents as denying them their due and preventing them from killing the draft once and for all. Perhaps anticipating defeat, the YES camp has recently begun to deflate the vote's importance as a political test of wills.

18. (C) Should there actually be a YES win -- even by a wide margin -- the Orange camp is likely to cry fraud and turn to popular protest. (Indeed, some are already making wishful comparisons to Ukraine's "Orange Revolution.") The possibility for violence under this scenario is real. The YES forces, emboldened by their win, likely would be quick to unleash the security forces against the opposition -- especially if talk of "people power" and "regime change" fills the air. (Security Minister Michuki, himself a Kikuyu campaigning for YES, spoke darkly after Kisumu of maintaining the state's monopoly on the use of force.) But even should the Oranges readily accept defeat, the legal system would be in for very tough times. Hundreds of pieces of legislation will need to be passed to bring current laws into conformity with the new constitution, which is to be promulgated December 12 -- yet historically Parliament is incapable of passing even a dozen laws a year. Kenya would thus likely face a prolonged period in which all key institutional and economic reforms requiring legislation would be stuck in legal limbo.

19. (C) Should the NO team win handily, pressure would mount for early elections to unseat President Kibaki. A Parliamentary vote of "no confidence" could come as early as the first quarter of 2006. Close to half of all parliamentarians are already publicly pro-Orange. Other solons likely would be pressured by their constituents should the NO vote carry overwhelmingly despite their own pro-Banana stances. One brake on this possibility is the fact that MPs -- of all persuasions -- are generally loath to risk their own (lucrative) seats short of a full five-year term. Even if there were no early vote, the campaign for 2007 will have begun in earnest. And with the LDP formally allying with the KANU opposition, and riding high after defeating the referendum, an already weak President Kibaki will garner "lame duck" status. The prospects for significant political progress during the rest of his term on key issues of interest to us -- counter-terrorism, anti-corruption, good governance, economic reform -- will be similarly reduced.

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